

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE

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DENNIS P. STEBBINS

Plaintiff,

v.

HOME STAR MORTGAGE SERVICES, LLC

Defendant.

C.A.

04 - 30206 - MAP

COMPLAINT

INTRODUCTION

FILING FEE PAID:

RECEIPT # 305758

AMOUNT \$ 150.00

BY DPT CLK Mkh

DATE 10/18/04

1. This action seeks redress against st Mortgage Company for violations of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA") and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226 and it's Massachusetts counterparts, Massachusetts Consumer Credit Cost Disclosure Act, Mass. G.L. ch. 140D and 209 C.M.R. part 32.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under 15 U.S.C. §1640 (TILA), and 28 U.S.C. §§1331 (general jurisdiction),1332 (diversity jurisdiction) and 1337 (interstate commerce) and 1367 (supplemental jurisdiction). Diversity jurisdiction is applicable as the Plaintiff is residents of Massachusetts and seeks rescission of a \$110,000.00 mortgage obligation held by an out of state corporation that does not have it's principle place of business in Massachusetts.

3. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) because Defendant does business in this District. Defendant is therefore deemed to reside in this District under 28

U.S.C. § 1391(c).

PARTIES

4. At the time of the refinancing with Homestar, the plaintiff Dennis P. Stebbins resided at 141 Skeele Street, Chicopee, MA 01013.

5. Defendant Home Starr Mortgage LLC is a Delaware corporation with its principle place of business located outside the Commonwealth of Massachusetts. The Defendant does business in Massachusetts.

6. Home Star Mortgage Services, LLC enters into more than 5 transactions per year in which credit is extended that is secured by the principal residence of a consumer and is used for purposes other than the initial acquisition or construction of the residence.

7. Home Star Mortgage services LLC is therefore a creditor as defined in TILA and implementing Federal Reserve Board Regulation Z.

FACTS

8. On or about November 6, 2001, Plaintiff obtained a loan from Home Star Mortgage Services LLC, secured by their residence, for the purpose of debt consolidation. All of the proceeds of the loan were used for personal, family or household purposes. This loan paid off a prior mortgage obligation due a different mortgage lender.

9. In connection with the transaction, Plaintiff Dennis P. Stebbins received or signed a note, a mortgage, a Truth in Lending Statement and A notice of right to cancel. Said right to cancel form is attached hereto as Exhibit A.

10. Because the transaction was secured by Plaintiff's home, and was not entered into for purposes of the initial acquisition or construction of that home, it was subject to the right to cancel provided by 15 U.S.C. §1635 and 12 C.F.R. §226.23.

11. The copies of the notice of right to cancel actually delivered to Dennis P. Stebbins provided only a limited right to cancel for a transaction involving a refinancing with the same lender. The right to cancel forms were accordingly defective and misleading as the Plaintiff was entitled to receive complete rescission forms of the type involving a refinancing with a different lender.

12. On or about September 13, 2003, the Plaintiff exercised his extended right to rescind the loan for violations of TILA. A notice of rescission was sent to Home Star Mortgage Services LLC. A Copy of the notice is attached as Exhibit B.

13. The Defendant did not respond to the Plaintiff's request to rescind the loan.

COUNT I - TRUTH IN LENDING ACT

14. Plaintiff incorporates ¶¶ 1-13 as if fully set out herein.

15. By failing to provide the correct version of the notice of right to cancel form to the Plaintiff, Home Starr Mortgage LLC failed to give Plaintiff clear and conspicuous notice of their right to cancel, in violation of 15 U.S.C. §1635 and 12 C.F.R. § 226.23.

16. 15 U.S.C. § 1635(g) provides that a court may award damages under section 1640 in addition to rescission. Mass .G.L. ch. 140D § 10(g) is identical except for citation.

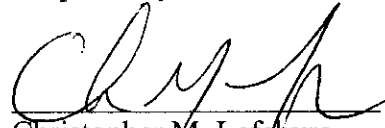
17. The failure of the Defendant to respond to the notice of rescission is a separate violation of 15 U.S.C. § 1640 (a) and Mass .G.L. ch. 140D § 32 entitling the Plaintiff to an

award of statutory damages.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendant Home Star Mortgage services LLC as follows:

1. A declaration that Plaintiff is entitled to rescind;
2. Rescission of the loan;
3. Statutory damages;
4. Attorney's fees, litigation expenses and costs.
5. Such other relief as the Court deems appropriate.

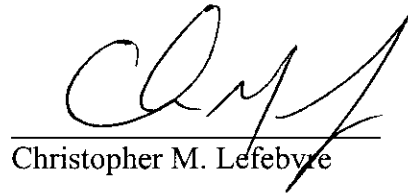
Respectfully submitted,



Christopher M. Lefebvre
Claude Lefebvre, Christopher Lefebvre P.C.
P.O. Box 479
Pawtucket, RI 02862
(401) 728-6060
(401) 728-6534 (FAX)
BBO# 629056

JURY DEMAND

Plaintiff demand trial by jury.



Christopher M. Lefebvre

Exhibit A

NOTICE OF RIGHT TO CANCEL

REFINANCE

LENDER: HOMESTAR MORTGAGE SERVICES, LLC
 ONE PARAGON DRIVE, SUITE 255
 MONTVALE, NJ 07645

BORROWERS/OWNERS DENNIS P. STEBBINS and ELIZABETH J. STEBBINS

DATE 11/06/2001
 LOAN NO. 5000685600
 TYPE FHA

ADDRESS 141 Skeele Street
 CITY / STATE / ZIP Chicopee, Massachusetts 01013
 PROPERTY 141 SKEELE STREET
 CHICOPEE, Massachusetts 01013

YOUR RIGHT TO CANCEL

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within THREE BUSINESS DAYS from whichever of the following events occurs last:

- (1) The date of this new transaction, which is 11/06/2001 ; or
- (2) The date you received your new Truth In Lending disclosures; or
- (3) The date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within TWENTY CALENDAR DAYS of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this new transaction, you may do so by notifying us in writing, at:

HOMESTAR MORTGAGE SERVICES, LLC
 ONE PARAGON DRIVE, SUITE 255
 MONTVALE, NJ 07645

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than MIDNIGHT of 11/09/2001 (or MIDNIGHT of the THIRD BUSINESS DAY following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

CONSUMER'S SIGNATURE

DATE

Each borrower/owner in this transaction has the right to cancel. The exercise of this right by one borrower/owner shall be effective as to all borrowers/owners.

The undersigned each acknowledge receipt of two copies of NOTICE OF RIGHT TO CANCEL

X 11/06/01
 BORROWER/OWNER DATE
 DENNIS P. STEBBINS

X 11/06/01
 BORROWER/OWNER DATE
 ELIZABETH J. STEBBINS

X
 BORROWER/OWNER DATE

X
 BORROWER/OWNER DATE

CONFIRMATION CERTIFICATE

DO NOT SIGN UNTIL THREE BUSINESS DAYS HAVE ELAPSED

Three business days have elapsed since the undersigned have received two copies of this document. Each of the undersigned hereby certify and warrant that they have not exercised any right which they may have to rescind the transaction, that they do not desire to do so, and that they ratify and confirm the transaction in all respects.

BORROWER/OWNER DATE
 DENNIS P. STEBBINS

BORROWER/OWNER DATE
 ELIZABETH J. STEBBINS

BORROWER/OWNER DATE

BORROWER/OWNER DATE



Exhibit B

FROM THE OFFICE OF THE
FAMILY AND CONSUMER LAW CENTER
WWW.FCONSUMERLAW.COM
CLAUDE R. LEFEBVRE
CHRISTOPHER M. LEFEBVRE, P.C.
ATTORNEYS & COUNSELORS AT LAW

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

September 13, 2004

Home Star Mortgage Services, LLC
One Paragon Drive, Suite 255
Montvale, NJ 07645

RE: Dennis P. Stebbins 141 Skeelee Street Chicopee MA 01013
Loan No. **5000685600**


To Whom It May Concern:

I represent Dennis P. Stebbins regarding the mortgage loan transaction he entered into with Home Star Mortgage Services, LLC on November 6, 2001. Please be advised that I have been authorized by my client to rescind that transaction and hereby exercise that right pursuant to the Federal Truth In Lending Act, 15 U.S.C. Section 1635 and Regulation Z, Section 226.23.

The primary basis for the rescission is that Mr. Stebbins was given improper right to cancel forms in the above consumer credit contract, in violation of 15 U.S.C. Section 1635(a) and Regulation Z, Sections 226.17 and 226.23 and the Massachusetts counterparts.

The security interest held by Home Star Mortgage Services, LLC on the Stebbins property located at 141 Skeelee Street Chicopee MA 01013 is void as of this rescission. Pursuant to Regulation Z, you have twenty days after receipt of this Notice of Rescission to return to my client all monies paid and to take action necessary and appropriate to terminate the security interest.

Very truly yours,
Dennis P. Stebbins
By his Attorney,


Christopher M. Lefebvre
P. O. Box 479
Pawtucket, RI 02862

7110 1093 9385 0000 0225

RETURN RECEIPT SERVICE	POSTAGE	\$0.33	POSTMARK OR DATE
	RESTRICTED DELIVERY FEE	\$2.75	
	CERTIFIED FEE	\$1.40	
	RETURN RECEIPT FEE	\$1.25	
SENT TO:		TOTAL POSTAGE AND FEE	\$5.73
9/13/2004 Code: Stebbins 3:59 PM File: Home Star Mortgage Services, LLC One Paragon Drive, Suite 255 Montvale, NJ 07645			

PS FORM 3800



RECEIPT FOR CERTIFIED MAIL.

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(SEE OTHER SIDE)**SENDER:**

- Complete items 1, 2 and 3.
- Indicate if restricted delivery is desired.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following service (for an extra fee):

☒ **Restricted Delivery**

Consult postmaster for fee.

1. Article Addressed to:

Home Star Mortgage Services, LLC
 One Paragon Drive, Suite 255
 Montvale, NJ 07645

2. Article Number

7110 1093 9385 0000 0225

3. Service Type ☒ **CERTIFIED**

Date of Delivery

9-15-04

Received By: (Print Name)

Enter delivery address if different than item 1.

Signature - (Addressee or Agent)

Dawn Peterson

PS Form 3811

DOMESTIC RETURN RECEIPT

Stebbins